IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6693 OF 2004

Shrimati Rajashri Shrimant
Patil & Anr. ...Petitioners

Versus

Solapur Municipal Corporation ...Respondents
& Anr.

.....

Mrs.S.S.Deshpande for Petitioners.

Mr.V.B.Naik for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 31, 2004.

P.C.

1. Heard Counsel appearing for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Naik waives notice for Respondents.

3. As short question is involved, the matter is heard for final disposal forthwith, by consent.

4. The Petitioner No.1 being handicapped person, was allotted booth for operating Public Telephone on lease basis in the year 1991. Suffice it to observe that at present, the Corporation has decided to take action against the Petitioner on the ground that the Petitioner has permitted third party to operate the Telephone Booth instead of conducting the same personally, which was the condition for allotment in her favour. The Authority, after holding enquiry, proceeded to pass order against the Petitioner, which decision was questioned before this Court on the earlier occasion in Writ Petition No.5892 of 2002. In the said Writ Petition, grievance was made on behalf of the Petitioner that the Authorities have relied on certain documents without providing copies thereof to the Petitioner. In the context of the grievance made, this Court by order dated 4th March 2003, disposed of the Writ Petition by directing the Authorities to hold fresh enquiry and furnish all relevant documents to the Petitioner on which, they would propose to rely. After the said order, fresh enquiry is stated to have been conducted by the

Authorities and once again, order of dispossessing the Petitioner has been passed by the Assistant Commissioner on April 28, 2003. That decision was questioned in statutory appeal before the District Court and the appeal has also been dismissed on 1st July 2004.

5. The present Petition, therefore, takes exception to the decision of the Assistant Commissioner dated 28th April 2003 and also of the Additional District Judge, Sholapur dated July 1, 2004 in B.P.M.C. Appeal No.1 of 2003.

6. The principal grievance made in this Writ Petition is that once again, the Authorities have not provided the relevant documents on the basis of which, the Authorities have proceeded to decide the matter against the Petitioner. The grievance is that the Authorities have relied on some advertisement, photographs as well as report of the Officer, but none of these documents have been made available to the Petitioner. It is, therefore, contended that the entire enquiry is vitiated on that account.

7. Counsel for the Respondent Corporation, however, justified the order passed by the Assistant Commissioner as well as the District Court in appeal. According to him, the Authorities below have proceeded to answer the issue against the Petitioner mainly relying upon the documents produced by the Petitioner and therefore, non-supply of documents referred to above, would make no difference to the outcome of these proceedings.

8. However, after considering the rival submissions and going through the record and in particular, on close examination of the decisions of the Assistant Commissioner as well as the District Court, it is amply clear that both the Authorities have decided the issue against the Petitioner mainly relying upon the advertisement, photographs and report of the Officer. It is not in dispute that copies of the said documents were not made available to the Petitioner. If it is so, the enquiry conducted by the Authorities clearly suffers from vice of principles of natural justice.

The appropriate course, in such a situation, is to set-aside the impugned decisions and relegate the parties for fresh enquiry to be conducted by the Authority after furnishing the documents which are referred to above, which are essentially the basis on which issue has been answered against the Petitioner, or any other document, on which, the Corporation would propose to rely in the final decision to be passed. The said enquiry be conducted in accordance with law. All questions therein are left open.

9. The enquiry be conducted as expeditiously as possible, preferably within three months from the receipt of writ of this Court. The Petitioners shall extend full co-operation for the conduct of that enquiry.

10. It is made clear that this decision is not expression of opinion on any of the contentions, which are involved in this Petition.

11. Having regard to the peculiar facts and circumstances of the case, as the matter is

required to be remanded for the second time, the appropriate course is that the fresh enquiry is conducted by some other Assistant Commissioner of the Respondent Corporation.

12. In case, the decision in the fresh enquiry is adverse to the Petitioner, the same shall not be given effect to for a period of two weeks from the date of communication of the decision to the Petitioner to enable the Petitioner to take the matter in appeal, if so advised.

13. Petition allowed on the above terms. No order as to costs.

A.M.KHANWILKAR, J.